

Final Order Denying Refund: 04-20200402
Sales & Use Tax
For the Tax Year 2019

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Taxpayer is not entitled to a refund because Taxpayer failed to prove that sales tax had been remitted to Indiana.

ISSUE

I. Sales and Use Tax - Credit for Tax Paid Out-of-State.

Authority: IC § 6-2.5-3-2; IC § 6-2.5-3-1; IC § 6-2.5-13-1; IC § 6-2.5-8-8; IC § 6-2.5-1-2; IC § 6-2.5-4-1; IC § 6-2.5-3-4; IC § 6-2.5-9-3; IC § 6-2.5-3-6; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, (Ind. 2014); *Rhoads v. Indiana Dep't of State Revenue*, 774 N.E.2d 1044, 1047 (Ind. Tax Ct. 2002); *USAir, Inc. v. Indiana Dep't of State Revenue*, 623 N.E.2d 466, (Ind. Tax. Ct. 1993); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); [45 IAC 2.2-3-4](#); [45 IAC 2.2-3-14](#); [45 IAC 2.2-3-16](#); Indiana Sales Tax Information Bulletin #28L (December 2016).

STATEMENT OF FACTS

Taxpayer is a New Jersey car dealership doing business in Indiana. Taxpayer leased a vehicle to an Indiana resident. Taxpayer hired a New York based third-party agency ("agency") through which it paid sales tax and plate fees to Indiana. Taxpayer paid the agency an amount which included Indiana sales tax on the lease, plate fees, and a service fee. The agency in turn hired a third-party agency for titling and registration company to process the plates. The agency remitted processing fees and Indiana sales tax to the Indiana titling and registrations company.

In this instance, Taxpayer paid the entire amount of Indiana sales tax due through the agency up front. Taxpayer claims that this was done in error as it did not charge its Indiana customer sales tax in the initial transaction, rather, its customer pays sales tax as a part of the monthly lease payment. As such, Taxpayer filed a refund request with the Indiana Department of Revenue ("Department") for the Indiana sales tax originally remitted. The Department denied the refund and Taxpayer filed a timely protest. An Administrative hearing was held and this Order Denying Refund results. Additional facts will be provided as necessary.

I. Sales and Use Tax - Credit for Tax Paid Out-of-State.

DISCUSSION

Taxpayer is an out-of-state car dealership which leased a vehicle to an Indiana resident. Taxpayer uses a New York-based agency to process all vehicle titling and registrations which take place outside of Taxpayer's home state. Taxpayer paid the agency to process the Indiana lease. Taxpayer's payment to the agency included Indiana sales tax, plate fees, and a service fee. The Indiana sales tax collected by the agency was then remitted to an Indiana titling and registration company. Taxpayer now asks that the Indiana sales tax remitted in the initial transaction be refunded since its customer pays Indiana sales tax on the transaction as a part of its monthly lease payment.

The Department denied Taxpayer's request, stating that "taxpayer is requesting a refund for the sales tax paid to the New York Division of motor vehicle in error. The lease to an Indiana resident had the sales tax included in the monthly payment. The [Department] is denying in total any payment of the sales tax to another state."

First, it is important to note that "when [courts] examine a statute that an agency is 'charged with enforcing. . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus,

all interpretations of Indiana tax law contained within this decision shall be entitled to deference.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b).

Taxpayer is located outside of Indiana but leased a vehicle to an Indiana resident. Because of the involvement of more than one state, we must first determine where the sale is properly sourced. Indiana law states that a retail sale is sourced to Indiana and therefore is subject to Indiana sales tax when the transaction is a "retail sale . . . of a product" and "the product is received by the purchaser" in Indiana. IC § 6-2.5-13-1(d)(1).

IC § 6-2.5-13-1(d) provides:

(d) The retail sale, excluding lease or rental, of a product shall be sourced as follows:

- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- (3) When subdivisions (1) and (2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subdivisions (1), (2), and (3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When none of the previous rules of subdivision (1), (2), (3), or (4) apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

Indiana's Sales Tax Information Bulletin #28L (December 2016), [20161228-IR-045160561NRA](#), provides:

A lease is subject to Indiana sales tax if the vehicle is to be primarily located within Indiana. A lease where the vehicle is to be primarily located in another state will be subject to that state's sales/use tax and will not be subject to the Indiana sales tax. The lessor shall collect and remit the appropriate sales tax to the appropriate taxing jurisdiction.

. . .

For a lease or rental that requires recurring periodic payments (monthly payments), all lease payments (down payments, manufacturer's rebates, equity in trade-in resulting in a capital cost reduction, and each periodic lease payment) are to be sourced to the primary property location of the motor vehicle or trailer. The primary property location shall be as indicated by an address for the property provided by the lessee (user) that is available to the lessor (owner) from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith.

The Indiana customer leased and took possession of the vehicle in person at Taxpayer's Dealership in New Jersey. As provided in Indiana Sales Tax Information Bulletin #28L (December 2019), above, since lessee is an Indiana resident, the vehicle's primary location is in Indiana, and the vehicle was licensed in Indiana for use on Indiana roads, the lease of the vehicle is subject to Indiana sales tax.

As stated above, Taxpayer paid the New York titling company Indiana sales tax, plate fees and a service fee to title and register the vehicle in Indiana. However, since the New York titling company hired an Indiana registration company, all that the documentation provided establishes is that the New York titling company paid an amount to the Indiana registration company. It does not establish that the Indiana registration company remitted anything to the Indiana Department of Revenue. Without such documentation, Taxpayer has failed to prove that Indiana sales

tax was remitted to the Department. If Indiana sales tax was remitted in the original transaction and is also being remitted via customer's monthly payment, Taxpayer may be entitled to a refund. Without proof, Indiana cannot refund the protested sales tax. Therefore, Taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.

April 27, 2021

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